IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.14103 of 2000

Between

L.Kotaiah S/o.Nageswara Rao,
CISF Unit, SCCL Head Quarters, Ramakrishnapuram,
Adilabad District

..... PETITIONER

AND

1 The Commandant, Central Industrial Security Force Unit
SCCL Head Quarters, Bellampalli,
Adilabad District.
2 The Deputy Inspector General, Central Industrial Security Force (SZ)
D-Block, Rajaji Bhavan, Besant Nagar, Chennai - 90

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction especially one in the nature of writ of mandamus:- i) declaring the impugned order No.V-15014/SCCL/RKP/DISC/LK/99-4620, Dt.26/4/1999 issued by the First respondent and consequential appellate order NO.V-11014/32/99L&R(SZ)/5020, Dt.30/07/1999 issued by the second respondent as illegal, arbitrary and set aside the same, ii) direct the respondents to reinstate the petitioner into service duly granting all other consequential benefits iii)and pass such other order.

Counsel for the Petitioner: Mr.K.VASUDEVA REDDY

Counsel for the Respondents: Smt. E.Urmila, Addl.Standing

Counsel for Central Government

The Court made the following :

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ORAL ORDER:

This writ petition is filed seeking a Mandamus to declare the Proceedings dated 26-4-1999 issued by the 1st respondent and the appellate order dated 30-7-1999 issued by the 2nd respondent as arbitrary and illegal and to set aside the same and consequently to direct the respondents to reinstate the petitioner into service with all consequential benefits.

The petitioner while working as a Constable at Central Industrial Security Force (CISF) Unit, Singareni Collieries Company Limited, Ramakrishnapuram area was proceeded against under Rule 34 of CISF Rules,1969 vide Charge Memo dated 23-1-1999. The charge memo contains the following charges:

> "Charge-I : No.844340406 Constable L.Kotaiah of CISF Unit SCCL RKP Area is charged with gross misconduct and negligence of duty in that – while on 'C' shift duty in the intervening night of 18/19.12.98 at MK-4 Incline, he failed to prevent the Theft of property worth Rs.15,000/- which was stolen away from MK-4 Incline. Hence the charge.
>
> Charge-II : No.844340406 Constable L.Kotaiah of CISF Unit SCCL RKP Area is charged with gross misconduct and neglect of duty in that – while on 'C' shift duty at MK-4 Incline on the intervening night of 18/19.12.98, he connived with the criminals in stealing the Management property. Hence the charge.
>
> Charge-III : 844340406 Constable L.Kotaiah is an habitual offender in that during his past service of about 15 years, he was awarded 5 punishments for various types of omissions/commissions. In spite of reasonable opportunity, he did not mend his ways. Hence the charge."

Insofar as the present misconduct is concerned, it was alleged that on the intervening night of 18/19-12-1998 at MK-4 Incline, the petitioner failed to prevent the theft of property worth Rs.15,000/-, which was stolen away. He also connived with the criminals in stealing the property of the management. So far as the third charge is concerned, he is an habitual offender and during 15 years of his past service, he was awarded five punishments for various types of

omissions/commissions and in spite of reasonable opportunity, he did not mend his ways. Insofar as the first two charges were concerned, a regular departmental enquiry was conducted as per the Rules and after giving opportunity to the petitioner and following the formalities, the disciplinary authority came to the conclusion that since the charges were proved, the petitioner was liable to be dismissed from service of CISF. Therefore, the 1st respondent issued Proceedings dated 26-4-1999 dismissing the petitioner from service. Aggrieved by the same, the petitioner filed an appeal before the 2nd respondent. The appellate authority – 2nd respondent herein – after elaborate consideration of the matter came to the conclusion that no ground is made out to interfere with the Proceedings dated 26-4-1999 of the 1st respondent and confirmed the findings of the disciplinary authority and rejected the appeal by an Order dated 30-7-1999. Challenging the same, the present writ petition is filed.

A detailed counter affidavit has been filed on behalf of the respondents denying each and every allegation made by the petitioner. It is asserted that during the course of hearing of the proceedings, the petitioner was asked by the Enquiry Officer at question No.11, whether he wants an assistance of any member of the Force to present his case. The answer was negative. The Deputy Commandant, who said to be the complainant and also a witness was neither a complainant nor a witness in this case, whereas, the Superintendent of Mines, MK-4 was the complainant; therefore, the contention of the petitioner that enquiry is vitiated was not tenable. It was also asserted that the Enquiry Officer was not subordinate to any one of the witnesses cited in the enquiry. It was further asserted that the copies of the listed documents were supplied to the petitioner along with charge memo, which is evident from the endorsement of the Inspector/Exe. on the acknowledgement of the charge memo. In fact, the petitioner himself requested for supply of copies of the statements of some witnesses recorded during the preliminary enquiry by an application dated 26-2-1999 and the same were supplied to him vide Enquiry Officer's letter dated 1-3-1999. So far as the language of the memorandum of charge was concerned, the petitioner never raised any such objection either during the pendency of the enquiry or before the appellate authority; therefore, the petitioner cannot raise such a contention in this proceeding. The petitioner requested to call for criminals during the enquiry, but it was felt not necessary by the Enquiry Officer, as there was sufficient evidence to prove the charges with reference to the statement of six prosecution witnesses and a court witness. Therefore, there was no necessity for

summoning of 21 persons as requested by the petitioner.

Learned counsel for the petitioner placed his arguments mainly on the ground that despite specific request by the petitioner, he was not allowed to have an Assistant in the domestic enquiry. Further, the Enquiry Officer was subordinate to the complainant and some of the witnesses; therefore, such a person could not have been appointed as an Enquiry Officer. Petitioner sought summoning of as many as 21 witnesses including the criminals, who were charged of the theft case and those persons were not called and even otherwise, the punishment imposed is disproportionate to that of the misconduct alleged against the petitioner.

Heard the learned Additional Standing Counsel for Central Government, who reiterated the averments made in the counter.

The charge, as such, is serious in nature. As per the proved charge, the petitioner allowed the criminals to steal the property of the Management. Therefore, this act, on the part of the petitioner, who is a member of the disciplined force, is not expected and cannot be taken leniently.

Further, charge No.3 wherein he was charged as an habitual offender and involved in more than five cases earlier and was also punished for the same is not denied by the petitioner and it would go to show that the finding of the disciplinary authority that he was an habitual offender cannot be doubted.

For all the above reasons, I am of the opinion that the impugned proceedings of the disciplinary authority – 1st respondent herein – as confirmed by the appellate authority – 2nd respondent herein – does not suffer from any legal infirmity or irregularity and does not call for interference at the hands of this Court under Article 226 of the Constitution of India.

Accordingly, the writ petition is dismissed. No order as to costs.

10-9-2004

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

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